

House Bill 208

January 30, 2018

Senate Committee on Labor & Commerce

Sponsor: Rep. DeLena Johnson

Staff: Andrew Evans



Bringing Alaska's Trust Related Laws into the 21st Century*

*Irrevocable Trusts

“In 1998 Alaska ranked in the top 3 states favorable for trust situs (location).” *

*Oshins & Assoc. April, 2017

- Alaska achieved this ranking by leading the nation in effective estate and tax planning legislation, making our state among the most trust - friendly environments in the country.
- Since the end of the 1990's states, such as Nevada, New York, South Dakota, and many others have passed newer laws expanding the flexibilities available to trusts.
- Alaska's ranking has fallen to #8 as more states become superior trust – favorable environments.
- Alaska must restore itself as a trust leader by evolving our trust related laws to meet current market realities and demands.
- HB208 seeks to update, clarify, and increase flexibility in trust related regulation, while maintaining the protections already codified in existing statute.

HB208 – WHAT THE BILL DOES FOR ALASKA

- Increased investment in Alaska's economy - Moving Alaska back into the 'top 3 favored states' for trust investment creates opportunities for Alaskan banks and trust companies to expand and invest inside Alaska.
- Diversifies Alaska's economy - Expands an industry that is not 'resource dependent,' by attracting non-resident trusts into resident institutions.
- More jobs – The trust industry creates demand for Trust Professionals, Accountants, and Attorneys, along with other employment in the financial services sector. An expanding trust industry necessarily creates demand in a minimum of 3 labor markets, providing more **high paying jobs** for Alaskans.
- Fee income to the State – Projected trust registration fees and non-resident life insurance premium taxes of \$7 to \$12 million annually.

HB208 – THE FOUR PILLARS OF FLEXIBILITY

○ There are 4 areas of flexibility in trust related law where Alaska has fallen behind:

○ **DECANTING OF TRUSTS**

○ **POWERS OF APPOINTMENT**

○ **TRACEABILITY OF ASSETS**

○ **CLARIFICATION OF TRUSTEES SPECIFIC POWERS**

A VERY SIMPLIFIED ILLUSTRATION OF THE ACT OF DECANTING A TRUST

Irrevocable trusts are like the wine bottle. Their form and properties remain fixed, and unchangeable.

The wine in the bottle is like assets in a trust. It's fluid but can only assume the properties given to it by its container.

Decanting the old trust enables the assets to benefit from favorable conditions available to the new trust, and can be a means to correct errors, take advantage of changes to tax laws, or other legal changes.



HB208 – DECANTING OF IRREVOCABLE TRUSTS

UNDER HB 208

- Expands the ability to correct errors & omissions through decanting
- Expands the discretion of trustees to improve trust for the benefit of the beneficiaries.
- Simplifies the current decanting process

HB208 – POWERS OF APPOINTMENT

ADDS TO STATUTE(S)

- Non-Fiduciary power of appointment may be exercised subject to limits contained in the trust document.
- Non-Fiduciary powers of appointment may not be limited because the holder is a trustee/fiduciary under the trust document
- Exercise of non-fiduciary powers of appointment may not be compelled by any person, court, or authority.
- Property subject to non-fiduciary powers of appointment is not subject to the claims of creditors of the person holding the power, or in whose favor the power may be exercised.
- Powers of appointment are considered held as non-fiduciary unless granted to a trustee or other fiduciary as such.
- Adds 3 subsections to AAS13.36.157 and 159 updating circumstantially the exercise of power of appointment used for decanting.

AMENDS STATUTE(S)

- Increases flexibility for certain trustees to appoint trust principal, grant discretionary power of appointment of appointed trust to beneficiaries of the invaded trust
- If invaded trust beneficiaries are considered a class, then appointed trust beneficiaries may include present or future members of the class
- Limited authorized trustee can appoint trust principal to trustee of appointed trust if all beneficiaries are the same as in the invaded trust
- Generally requires that the income & principal distribution/invasion standards be the same for the invaded and the appointed trust.
- Circumstantially, Invaded and appointed trusts must have the same powers of appointment.
- Amends AS13.36.159b, d, and e as regards the formal written evidence of power to appoint to appointed and invaded trusts and required documents.
- Permits trust instrument to authorize trustee to exercise a power without noticing beneficiaries.

HB208 – TRACEABILITY OF ASSETS

PRESENTLY

- Assets currently placed into trusts by more than one taxpayer cannot be traced as to their original ownership.
- In the event of divorce, beneficiary conflicts, or other events requiring a separation of assets there may be no alternative but expensive litigation.

UNDER HB 208

- Assets entering the trust may be documented as to their origin, pre-trust ownership or percentage of ownership prior to being placed into the trust.
- In the event of divorce, beneficiary conflicts, or other such events, the assets of the trust are traceable back to the point they entered the trust.
- Tracing of origin will allow retention of certain tax benefits even after one of the settlors expires.

HB208 – CLARIFICATION OF TRUSTEES SPECIFIC POWERS

ADDS TO STATUTE(S)

- Circumstantially allows trustee to divide a trust created by more than one settlor into separate trusts
- Defines what “standard” refers to, and how a particular standard may be written
- Adjusts the definition of “Appointed Trust”
- Adjusts the definition of “Authorized Trustee”
- Adjusts the definition of “Invaded Trust”
- Adds definition of “Beneficiary, Limited Authorized Trustee, Unlimited Authorized Trustee”
- Adds new section authorizing a court to permit the trustee of An irrevocable trust to invade trust principal if the court makes certain findings.
- Repeals AS34.27.051 –statutory rule against perpetuities and Re-enacts that 2nd power created by 1st power may exercise postponing property vesting w/o regard to the creation of the 1st power and all property interests must vest no later than 1000 years after creation of the 1st power.

AMENDS STATUTE(S)

- Gives trustee the power to insure against liability with respect to the trust beneficiaries and to charge the costs against trust property.
- Permits appointed trust to have a duration longer than the invaded trust
- Changes definition of “Internal Revenue Code” to refer to the code as it exists on the effective date of this act.
- An authorized trustee exercising a power under AS13.36.157-159 has a fiduciary duty to act in the best interests of that over which the power is exercised
- Allows terms of governing trust instrument to regulate the right of trustee to appoint the property of a trust.
- Applies effective dates, retroactivities, and immediate bill effective date.

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